BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer	Chair
Marshall Johnson	Commissioner
Ken Nickolai	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner

In the Matter of Qwest Corporation Notification to Disconnect The Minnesota Phone Company

ISSUE DATE: October 25, 2006

DOCKET NO. P-421,6198/M-06-1412

ORDER AUTHORIZING DISCONNECTION AND SETTING CUSTOMER NOTIFICATION REQUIREMENTS

PROCEDURAL HISTORY

On October 6, 2006, Qwest Corporation filed a letter notifying the Commission that on October 20 it intended to disconnect telephone lines it was leasing to The Minnesota Phone Company, a competitive local exchange carrier and long distance company. The letter stated that The Minnesota Phone Company was in bankruptcy, owed Qwest some $300,000, had failed to provide adequate assurance of payment, and was continuing daily to incur indebtedness for the use of these lines, which it was using to provide service to Minnesota telephone subscribers.

The letter claimed that Qwest was entitled to take this action “[b]ased on the combination of the Bankruptcy Court Order authorizing disconnection and the prior decision of the Minnesota Commission that it does not have jurisdiction over a disconnection request in the context of a bankruptcy proceeding.”

On October 13, 2006, the Minnesota Department of Commerce (the Department) filed comments stating that Qwest was mistaken about the prior Commission decision on which it relied and that the Bankruptcy Court’s Order was permissive, not mandatory, and therefore did not preclude Commission action to protect local telephone subscribers from disconnection without notice.

The Department pointed out that the Commission has always placed a high priority on protecting telephone subscribers from disconnection without notice and urged the Commission to schedule the matter for its next regularly scheduled meeting on October 19. Meanwhile, the Department promised to work with both companies to try to reach agreement on an orderly process to notify customers of The Minnesota Phone Company that they must select another carrier before Qwest disconnected service to The Minnesota Phone Company.

The Commission did set the matter for hearing on October 19, when Qwest, the Department, and The Minnesota Phone Company appeared. The Department reported that it had been unable to facilitate an agreement between Qwest and The Minnesota Phone Company for an orderly process of customer notification prior to disconnection of the leased lines.

The Minnesota Phone Company (MPC) stated that it was in the process of ending its operations and had sent customers a written notice that they must select another carrier. That notice, however, did not give a date on which the company would stop providing service. The company also said that it was in the process of attempting to contact all customers by telephone and believed that it could complete that process within two weeks. The company asked the Commission to set disconnection terms that would ensure that its customers received notice and an opportunity to select another carrier before their local telephone service was disconnected.

Qwest argued that the Commission lacked the authority to prevent the disconnection of the leased lines.

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

No party argued that Qwest should not be allowed to disconnect the lines that The Minnesota Phone Company is leasing; the issue is whether The Minnesota Phone Company should first notify its customers that they must switch to another carrier or lose local phone service.

The grounds that Qwest has advanced in writing to support immediate disconnection without notice to customers are invalid. The additional grounds advanced at hearing are not ripe for decision: they have not been set forth in writing, and neither the Department nor MPC has had adequate opportunity to respond to them.

Qwest has not demonstrated a right to terminate service to The Minnesota Phone Company without notice to MPC's Minnesota customers, but it has demonstrated that it should be allowed to disconnect with notice. The Commission will therefore establish an orderly process for customer notification and for subsequent termination of Qwest's service to The Minnesota Phone Company.

These actions are explained below.

II. Qwest's Written Grounds for Immediate Disconnection Without Notice Are Off the Mark

In its written submission, Qwest claimed the right to disconnect MPC without notice to customers on these grounds: ". . . the combination of the Bankruptcy Court Order authorizing disconnection and the prior decision of the Minnesota Commission that it does not have jurisdiction over a disconnection request in the context of a bankruptcy proceeding."

While the United States Bankruptcy Court hearing MPC's case did issue an Order in July finding Qwest "authorized to alter, refuse or discontinue utility services to [the Minnesota Phone Company]," the Order did not require any of these three actions; it merely authorized them, presumably subject to any due process or other procedural constraints duly enacted under valid state police powers.

Furthermore, Qwest did not even claim that it had a right to disconnect without notice based on the Bankruptcy Court's Order alone; it claimed that right based on the Bankruptcy Order and an alleged oral Commission ruling in August 2006 in docket P-633,6198/M-06-719 dismissing a petition to disconnect service to a competitive local exchange carrier in bankruptcy on grounds that the Commission had no jurisdiction over the petition in the context of a bankruptcy proceeding.

The Company was mistaken about the Commission's action in docket 06-719. The Commission did not dismiss the petition in that case on jurisdictional or any other grounds; it deferred action on the petition.

Further, the two cases are very different. In the first case, the Bankruptcy Code's automatic stay was in effect, both preventing disconnection and putting other judicial and administrative proceedings on hold; here, the Court has issued an Order giving the creditor/incumbent carrier a range of options, including disconnection. The Commission has never addressed a petition to disconnect a competitive local exchange carrier in this situation, and reliance on the earlier case would therefore be inappropriate even if the holding had been what the Company mistakenly thought.[1]

Qwest's stated grounds for disconnecting service without notice to customers are therefore insufficient, and Qwest has failed to demonstrate a right to disconnect without permitting notice to MPC's customers.

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[1] The Commission has taken jurisdiction and required pre-disconnection notice in a similar case involving long-distance service, *In the Matter of a Petition by US WEST Communications, Inc. to Disconnect Service to Heartline Communications, Inc.*, Docket No. P-5181,421/M-97-1394, Order Granting Request to Discontinue Service (October 7, 1997).

III. Protecting Telephone Subscribers From Disconnection Without Notice Is Critical to the Public Interest and Required by Minnesota Law and Public Policy

This State and this Commission have long been committed, as a matter of law and policy, to protecting Minnesota telephone subscribers from disconnection without notice.

Since 1915, Minnesota telecommunications statutes have required seamless interconnection between the local exchanges served by various carriers.[2] The Legislature imposed similar interconnection and disconnection requirements between carriers when it mandated competition in the local telecommunications market.[3] Commission rules governing competitive local exchange carriers require these carriers to give subscribers 60 days' notice before exiting a service area.[4]

Similarly, the Commission's customer service rules have long contained detailed, consumer-oriented procedures that must be followed before terminating service to individual customers.[5] And the Commission has consistently required that interconnection agreements between incumbents, like Qwest, and competitive local exchange carriers, like The Minnesota Phone Company, contain provisions prohibiting disconnection of service by either carrier without Commission permission.[6]

As the Commission explained when imposing that requirement:

> Telephone service is essential to nearly all Minnesota households and businesses. Service interruptions are inconvenient at best and hazardous at worst. This Commission and all telecommunications providers have a responsibility to do everything possible to prevent sudden or unexpected interruptions of service. This means two things -- (1) carriers must not disconnect service to one another without good cause and Commission permission; and (2) customers whose carrier is being disconnected must receive enough notice to make an informed choice of another carrier and to complete service arrangements with that carrier.

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[2] Minn. Stat. § 237.12, subds. 1 and 2.

[3] Minn. Stat. § 237.74, subd. 9.

[4] Minnesota Rules 7811.0600, subp. 6; Minnesota Rules 7812.0600, subp. 6.

[5] Minnesota Rules 7810.1800 through 7810.2700.

[6] The Interconnection Agreement between Qwest and The Minnesota Phone Company contains this provision at Section 5.4.3 on page 32 and at 5.13.1 on page 42, *In the Matter of a Joint Application for Approval of the Interconnection Agreement Between Minnesota Phone Company Financial Group LLP and Qwest Corporation,* Docket No. P-6198,421/IC-02-2116, Order of January 10, 2003.

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> The Commission believes the contract must make it clear that U S WEST cannot terminate service to KMC without Commission permission. It has long been state policy to prohibit telecommunications providers from severing connections with, or discontinuing service to, another provider without Commission permission. Minn. Stat. § 237.12, subd. 2; In the Matter of Three Petitions to Discontinue Service to Access Plus, Docket Nos. P-999/CI-92-1061; P-421/EM-92-999; P-3006/M-92-1032; P-478/EM-92-1031. This prohibition was originally intended to protect the integrity of the state's interexchange network. It is, if anything, more necessary with the advent of local exchange competition, when not just interexchange connections, but the local network itself, can be jeopardized by hasty or unjustified severing of connections.
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> *In the Matter of the Joint Application of KMC Telecom Inc. and U S WEST Communications, Inc. for Approval of an Interconnection Agreement*, P-5426, 421/M-97-850, Order Rejecting Interconnection Agreement (August 13, 1997), at 3.

Subscribers' lives, their bodily integrity, and the security of their property can depend upon reliable telephone service and the access to public safety and emergency services personnel that it provides. For all these reasons, the Commission has always treated disconnection of service as a serious matter requiring adequate notice, and so have the local exchange carriers serving Minnesota households and businesses.

For example, Qwest's Master Service Agreement, a commercial agreement falling largely outside this Commission's authority and governing some line-leasing transactions, including some between Qwest and MPC, prohibits disconnection without the opportunity to notify customers:

> Notwithstanding the foregoing, Qwest shall not effect a disconnection pursuant to this section in such a manner that CLEC may not reasonably comply with Applicable Law concerning End User Customer disconnection and notification, provided that, the foregoing is subject to CLEC''s reasonable diligence in effecting such compliance.[7]

Providing or permitting notice to subscribers before taking action that will deprive them of service is a fundamental duty of all telecommunications providers, as explained above, and the Commission will therefore establish the notice requirements set forth below as part of this order authorizing Qwest to disconnect the telephone lines it is currently leasing to The Minnesota Phone Company.

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[7] Master Service Agreement, at 8.3, Disconnection, see Order of June 15, 2005 in Docket P-6198,421/IC-04-2047, *inter alia*.

IV. Plan for Customer Notice and Disconnection of The Minnesota Phone Company

The Minnesota Phone Company proposes to try to contact all customers by telephone and believes it can complete this effort within two weeks. The company also proposes to provide written notice to all customers, informing them that MPC is going out of business and that customers must select another carrier to avoid losing telephone service. This dual-track notice proposal is likely to reach as many customers as can possibly be reached, and the Commission will approve and require it.

The company requested the assistance of the Department of Commerce in drafting the written notice, and the Department agreed to assist. The Department's expertise will be invaluable in this effort, and the Commission will direct the company to follow through on its commitment to collaborate with the Department. The Commission will require the written notice within 10 days of the date of the hearing, to ensure that MPC's customers have adequate opportunity to make informed decisions about their future service options.

The Commission will authorize Qwest to terminate service to The Minnesota Phone Company at the end of the day on Thursday, November 30. This should both provide adequate time for customers to select and contract with another carrier and ensure that any customers caught unawares do not first find themselves without service on a weekend, when reinstating service would be difficult at best and impossible at worst.

For this reason, too, if Qwest does not terminate service at the end of the day on Thursday, November 30, it must wait until at least the following Monday. And it must not disconnect on any Friday, Saturday, Sunday, or any day when Qwest's business offices are not open to the public. As the Commission's customer service rules recognize,[8] disconnection at these times may prevent customers who are seeking essential telephone service from obtaining it promptly.

The Commission will so order.

ORDER

1. Qwest Corporation is hereby authorized to disconnect the telephone lines leased by The Minnesota Phone Company at the end of the day on Thursday, November 30, 2006.

2. If Qwest Corporation does not disconnect The Minnesota Phone Company at the end of the day on Thursday, November 30, 2006, Qwest shall not thereafter disconnect The Minnesota Phone Company on any Friday, Saturday, Sunday, or on any day when Qwest's business offices are not open to the public.

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[8] Minnesota Rules 7810.2100.

3. On or before October 30, 2006, The Minnesota Phone Company shall mail to all its remaining customers a notice approved by the Minnesota Department of Commerce and containing at least the following information: (1) The Minnesota Phone Company will no longer provide service after November 30, 2006; and (2) customers wishing to retain local service must select another local exchange carrier.

4. On or before November 2, 2006, The Minnesota Phone Company shall complete the process of attempting to contact all its remaining customers by telephone and informing them that (1) The Minnesota Phone Company will no longer provide service after November 30, 2006; and (2) customers wishing to retain local service must select another local exchange carrier.

5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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